

**UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF NEW HAMPSHIRE**

Viktor Novosel

v.

Civil No. 10-cv-165-PB

William L. Wrenn et al.

O R D E R

Two motions are before the court: (1) plaintiff Viktor Novosel's motion for reconsideration of the Report and Recommendation (doc. no. 36), which he filed pro se prior to counsel's filing an appearance on March 31, 2011; and (2) plaintiff's assented to motion for an extension of time to file an objection to the Report and Recommendation (doc. no. 39), filed by Novosel's counsel. Defendants filed an objection (doc. no. 38) to the motion to reconsider.

Background

Novosel, a prisoner at the New Hampshire State Prison ("NHSP"), has claimed that letters from his family, written in Croatian, have been rejected by the NHSP without notice, beginning in late 2006, in violation of his First Amendment right to receive family mail and his Fourteenth Amendment right to due process. Novosel filed a motion for a preliminary

injunction (doc. no. 9), seeking to enjoin interference with his mail and to require NHSP to provide him notice and an opportunity to object if incoming mail is rejected. On February 16, 2011, the court issued a Report and Recommendation (doc. no. 27), recommending that the motion for a preliminary injunction be denied, because Novosel failed to show either a likelihood of success on the merits or irreparable harm in the absence of an injunction.

On February 24, 2011, Novosel, litigating pro se, filed his first motion to reconsider (doc. no. 29) the February 16 Report and Recommendation, along with a motion for appointment of counsel (doc. no. 28). The court denied the motion to reconsider (doc. no. 29) in an endorsed order on March 15, 2011.

Shortly thereafter, the court ruled on Novosel's motion for appointment of counsel, see Order (Mar. 24, 2011) (doc. no. 35) (granting in part motion for counsel (doc. no. 28), and directed the clerk's office to request that an attorney represent Novosel for the limited purposes of objecting to the February 16 Report and Recommendation (doc. no. 27) and appearing in further proceedings on the motion for preliminary injunction (doc. no. 9). On the day the court ruled on the motion to appoint

counsel, Novosel filed his second motion to reconsider (doc. no. 36) the February 16 Report and Recommendation, which is presently before the court. Counsel for Novosel filed an appearance thereafter, on March 31, 2011, and filed the motion to extend the time to object to the February 16 Report and Recommendation (doc. no. 39).

Discussion

A. Assented to Motion for Extension

Novosel has requested that the court extend the deadline for filing an objection to the Report and Recommendation until June 2, 2011. Defendants have assented to the motion. The extension is not likely to result in the need for substantial changes to the pretrial scheduling order, issued March 8, 2011. For good cause shown, the motion (doc. no. 39) is granted.

B. Motion to Reconsider

Novosel has requested that this court reconsider the February 16 Report and Recommendation, contending that an injunction would be in the public interest to avoid embittering prisoners. Additionally, he has asserted that he recently obtained information showing that "Families of Incarcerated

Inmates" had complained about mail processing in meetings with NHSP officials held prior to 2010, and that two inmates have seen bags of inmate mail in the trash.

To prevail on a motion seeking the magistrate judge's reconsideration of a report and recommendation, the movant must show that the underlying report and recommendation is based on a manifest error of law or fact. See D.N.H. Local Rule 7.2(e); cf. Palmer v. Champion Mortg., 465 F.3d 24, 30 (1st Cir. 2006) (Fed. R. Civ. P. 59(e) motion to reconsider may be granted if "newly discovered evidence (not previously available)" has come to light or decision was based on manifest error of law). Novosel has not satisfied that standard.

Novosel has not shown that the evidence at issue was previously unavailable, or that the underlying Report and Recommendation was based upon any manifest error of law or fact. The evidence does not address the fate of foreign language mail or his own Croatian family mail, in particular. Those letters were returned by the mailroom and not discarded. Furthermore, the evidence at issue would not substantially alter this court's conclusions regarding Novosel's likelihood of success on the

merits or the risk of irreparable harm. Therefore, the motion for reconsideration (doc. no. 36) is denied.

Conclusion

For the foregoing reasons, the motion for reconsideration (doc. no. 36) is denied. The assented to motion to extend time (doc. no. 39) is granted. Novosel's objection to the February 16 Report and Recommendation (doc. no. 27) shall be filed by June 2, 2011.

SO ORDERED.



Landya B. McCafferty
United States Magistrate Judge

Date: April 11, 2011

cc: Robert S. Carey, Esq.
Kristen A. Fiore, Esq.
Matthew G. Mavrogeorge, Esq.

LBM:nmd